# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## FIRST APPEAL No. 428 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.L.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SAMIBEN W/O KALABHAI BOGABHAI - Appellant(s)**

**Versus**

**GUJARAT STATE ROAD TRANSPORT CORPORATION - Defendant(s)**

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**Appearance :**

MR MRUGEN K PUROHIT for Petitioner No(s).: 1.

MRS VASAVDATTA BHATT for Respondent No(s).: 1.

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**CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**

**Date : 16/08/2005**

**ORAL JUDGMENT**

1. This appeal arises out of a judgment and award rendered by M.A.C.Tribunal, Amreli on 23rd June,2003 in M.A.C.Petition No.583 of 2001, awarding compensation of

Rs.27,500/- to the claimant – appellant on account of accidental injuries sustained by her.

2. The appellant – claimant had preferred the said claim petition before the Tribunal claiming compensation of Rs.1 lakh on account of injuries sustained and disability suffered by her out of a vehicular accident that occurred on 21st September,2001 involving S.T.Bus No.GJ-18-V-5033. The claimant was travelling in the said Bus as a bona fide fare paying passenger. The accident occurred while the appellant was alighting from the Bus at the Hasupur-Devalia Bus Stop, when suddenly the driver of the Bus started the Bus. As a result, the claimant fell down and sustained injuries in form of fracture of left leg besides other injuries. She was taken to Civil Hospital, Amreli and treated as an indoor patient for about 11 days. She was required to be operated upon. Ultimately she claims to have sustained disability to the extent of 25% of left lower limb as per medical opinion of Dr.Bhavesh Dave, an Orthopedic Surgeon of Amreli.

3. After considering the evidence led by parties, the Tribunal awarded compensation of Rs.27,500/- which can be sub-divided into different heads of compensation as under:

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| Rs.7,500/- | towards pain, shock & Suffering |
| Rs.5,000/- | towards medical expenses |
| Rs.10,000/- | towards future economic loss and future treatment. |
| Rs.2,000/- | towards actual loss of income. |
| Rs.2,000/- | towards good food. |
| Rs.1,000/- | towards attendant charges. |
| Rs.27,500/- | Total. |

3.1 The Tribunal also awarded interest @ 9% from date of application till realization with proportionate costs.

4. Aggrieved by the said judgment, original claimant has preferred this appeal. This Court had issued notice to other side. Learned Advocate Ms.Vasavadatta appears for the respondent.

5. Learned Advocates are heard and the matter is admitted and taken up for final hearing with their consent in peculiar set of facts of the case.

6. At the outset, it may be noted that the appeal is preferred by the original claimant. The original opponent has not preferred any appeal. The finding of the Tribunal on negligence aspect is, therefore, not under challenge and has attained finality. As such, there can be no dispute on any contribution towards the cause of accident by the appellant.

7. That leaves only the question of the quantum of compensation.

7.1 The Tribunal has concluded that the income of the claimant can be assessed at Rs.1000/- and hence, awarded a compensation of Rs.2000/- towards actual loss of income. It has come on record that the claimant sustained fracture of left leg besides other injuries. It also appears that there was hospitalization of about 11 days and she was required to undergo surgery also. This must have immobilized the claimant for a reasonably long time, although she has not, in terms, stated as to how long she was immobilized. It has to be appreciated that in case of fracture, particularly when there is surgery undergone, the immobility can well be accepted for a period of about 6 to 8 weeks. Whereafter a plaster would be removed followed by physiotherapy treatment. In the opinion of this Court, the period of immobility can be assessed at 4 months which would fetch an amount of Rs.4000/- to the claimant towards compensation under head of actual loss of income as against Rs.2000/- awarded by the Tribunal.

7.2 Now, on compensation under the head of future economic loss, the doctor has deposed that the permanent disability of the appellant was 25% of the left lower

limb. The Tribunal also records that it had seen the petitioner – claimant while she was in the witness box and the Tribunal noticed disability. However, the Tribunal assessed the disability at 10%. Following the Rule of Thumb on assessment of disability, enunciated by Dr.Henry Kessler, in such situation, the permanent disability in respect of body as a whole would be 50% of the disability in respect of limb. The disability of the claimant can be assessed at 12.5%.

7.2.1 While computing future economic loss, prospective rise in income also will have to be taken into consideration. The Tribunal has assessed the income of the claimant at Rs.1000/- per month i.e. Rs.12,000/- per annum. If the schedule given in the Act is considered, even if there is no evidence, notional income can be assessed at Rs.15,000/- per annum. 12.5% of Rs.15,000/- would make Rs.1,875/-. Considering the age of the claimant to be 50 years at the time of accident, a multiplier of 11 can be adopted as per the schedule which would fetch an amount of Rs.20,625/- as compensation under head of future economic loss as compared to Rs.10,000/- awarded by the Tribunal.

7.3 The Tribunal has awarded an amount of Rs.7500/- under head of pain, shock and suffering. Undisputedly,

the claimant has undergone surgery and sustained fracture of left fibula and mellacoler as recorded by the Tribunal itself as emerging from the certificate of the Civil Hospital, Amreli. Her immobilization is assessed at 4 months. She would suffer rest of her life because of the disability. Considering all these aspects, in the opinion of this Court, the amount of compensation under head of pain, shock and suffering can reasonably be assessed at Rs.10,000/- as compared to Rs.7,500/- awarded by Tribunal.

7.4 So far as the compensation awarded under other heads like medical expenditure, special diet and attendant charges are concerned, no interference is called for.

7.5 In the opinion of this Court, therefore, the appellant would be entitled to a compensation of Rs.42,625/- under various heads as narrated herein below.

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| Rs.10,000/- | Towards pain, shock & suffering. |
| Rs.5,000/- | Towards Medical expenses. |
| Rs.20,625/- | Towards future economic loss. |
| Rs.4,000/- | Towards actual loss of income. |
| Rs.2,000/- | Towards Special diet. |
| Rs.1,000/- | Towards attendant charges. |
| Rs.42,625/- | Total |

8. The Tribunal has awarded Rs.27,500/- as compensation. The claimant, therefore, would be entitled to an additional compensation of Rs.15,125/- with proportionate cost and interest @ 9% from date of application till satisfaction of the award. Appeal, therefore, would stand allowed to that extent while confirming the other findings of the Tribunal.

**(A.L.DAVE,J.)**

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